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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 MARK PICOZZI,

6 Plaintiff,

7 v.

8 STATE OF NEVADA, et al.,

9 Defendants.

Case No. 2:22-cv-01011-ART-EJY

ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER (ECF Nos.
253, 254)

10 Plaintiff Mark Picozzi ("Picozzi"), who is incarcerated in the custody of the
11 Nevada Department of Corrections ("NDOC"), has submitted a civil-rights
12 complaint under 42 U.S.C. § 1983 against multiple defendants. In his Amended
13 Complaint, Plaintiff accuses Defendants of denying him access to medical
14 treatment for hemorrhoids and a back condition, failing to process requests to
15 the law library, retaliating against him for submitting grievances, refusing to let
16 him have a TV, withholding mail, and denying him Tier Time during Covid-19
17 related lockdowns. (ECF No. 10.)

18 Before the Court is Plaintiff's motion for a preliminary injunction and
19 temporary restraining order ("TRO") (ECF No. 253.)¹ In his motion, Plaintiff asks
20 the court for an order preventing his transfer to Ely State Prison, or any other
21 prison, until his medical issues are resolved. (ECF No. 253 at 8.) Additionally,
22 Plaintiff requests an order that Inmate Accounting put funds back into his
23 account; staff stop retaliating against him; sign "brass slips"; designate a
24 "deposition place"; file all legal documents; and permit him into the law library.
25 (*Id.*)

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27 ¹ Plaintiff's motions for a preliminary injunction and temporary restraining order
28 are filed separately as ECF Nos. 253 and 254 because of the differing relief
sought. These filings are identical and for ease this order will refer to ECF No.
253.

1 In response to Plaintiff's motion, the Court ordered Defendants to file a
2 status report (ECF No. 256.) Defendants then filed a response to Plaintiff's motion
3 (ECF No. 259) and Plaintiff filed a reply (ECF No. 265).

4 **I. Legal Standard**

5 A party seeking a preliminary injunction must demonstrate (1) a likelihood
6 of success on the merits, (2) a likelihood of irreparable harm if preliminary relief
7 is not granted, (3) the balance of equities is in their favor, and (4) an injunction
8 is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555
9 U.S. 7, 20 (2008). The analysis for a temporary restraining order is "substantially
10 identical" to that of a preliminary injunction. *Stuhlbarg Intern. Sales Co, Inc. v.*
11 *John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

12 **II. Analysis**

13 **A. Transfer**

14 Defendant's status report (ECF No. 265), filed in response to the Court's
15 order (ECF No. 255), states that "The Offender Management Division of the
16 Nevada Department of Corrections (NDOC) does not have any plans, either
17 current or future, to transfer Picozzi out of HDSP to any other institution within
18 the NDOC. However, while NDOC cannot guarantee that Picozzi will never be
19 transferred from HDSP to another institution, Picozzi's medical issues and
20 current litigation will be taken into consideration prior to any transfer that may
21 take place in the future." (ECF No. 265.)

22 Because NDOC has no current or future plans to transfer Plaintiff, Plaintiff
23 cannot demonstrate that at this time there is a likelihood of irreparable harm if
24 the injunction is not granted. Thus, Plaintiff's motion for an injunction preventing
25 this transfer is denied without prejudice.

26 **B. Additional Claims**

27 In Plaintiff's reply brief, after discussing his claim regarding transfer to Ely
28 State Prison, he states, "Picozzi waives all other arguments he made in this

1 motion due to what I learned on October 3, 2024,” at a settlement conference
2 with Magistrate Judge Baldwin. (ECF No. 265 at 2-3.) As Plaintiff has waived the
3 other claims made in this motion, the Court will not analyze them on the merits.

4 **III. Conclusion:**

5 It is therefore ordered that Plaintiff’s motions for a preliminary injunction
6 and temporary restraining order (ECF Nos. 253, 254) are DENIED without
7 prejudice.

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9 Dated this 14th day of November, 2024.

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12 ANNE R. TRAUM
13 UNITED STATES DISTRICT JUDGE
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